

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FILED
JUL 31 2017
Clerk, U.S. Courts
District Of Montana
Missoula Division

MATTHEW MICHAEL CONVERSE,
Plaintiff,
vs.
TRISTAN KOHUT, et al.,
Defendants.

CV 16-39-H-DLC-JTJ

ORDER

United States Magistrate Judge John Johnston entered his Findings and Recommendations on June 27, 2017 (Doc. 25), recommending dismissal of Count II of Plaintiff Matthew Michael Converse's ("Converse") Complaint. Additionally, on June 27, 2017, Judge Johnston issued an Order, Findings and Recommendations (Doc. 26) recommending dismissal of Defendant G Scott from this suit. Converse has failed to timely object to the Findings and Recommendations, and, as a result, has waived his right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left

with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Having reviewed the Findings and Recommendations, the Court finds no clear error in Judge Johnston’s conclusion that Defendants’ motion for judgment on the pleadings should be granted and Count II of the Complaint should be dismissed. As discussed by Judge Johnston, Count II of the Complaint, which alleges an equal protection claim under the Fourteenth Amendment, fails to set forth any facts alleging that Defendants acted in an intentionally discriminatory manner, or that he is a member of a protected class. Thus, this claim must be dismissed.

Additionally, the Court agrees with Judge Johnston that Defendant G Scott must be dismissed from this suit. Converse has not served Defendant Scott in the time permitted under the Federal Rules of Civil Procedure. Fed. R. Civ. P. 4(m) (allowing 90 days for service). Further, Converse has also failed to comply with the Court’s Order dated April 10, 2017, which required that he provide an address for Defendant Scott by July 7, 2017. Because Converse has failed to provide this address or request an extension to do so, the Court will adopt Judge Johnston’s recommendation and dismiss Defendant Scott.

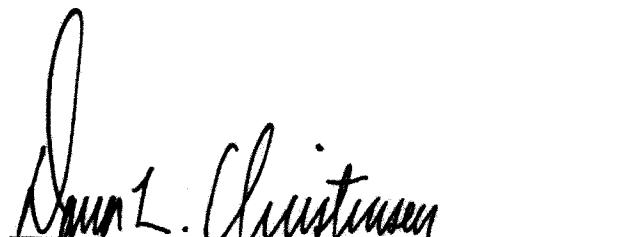
Accordingly, there being no clear error in the Findings and Recommendations, IT IS ORDERED that:

(1) Judge Johnston's Findings and Recommendations (Docs. 25 and 26) are ADOPTED IN FULL.

(2) Defendants' Motion for Judgment on the Pleadings (Doc. 16) is GRANTED and Converse's equal protection claim alleged in Count 2 of the Complaint is DISMISSED;

(3) Defendant G Scott is DISMISSED WITHOUT PREJUDICE pursuant to Federal Rule of Civil Procedure 4(m) for failure to effect service.

Dated this 31st day of July, 2017.



Dana L. Christensen
Dana L. Christensen, Chief District Judge
United States District Court